

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF NEVADA  
3

4 Bramby A. Tollen,

5 Plaintiff

6 v.

7 Clark County Association of School Administration  
8 and Professional Employees,

9 Defendant

2:15-cv-01096-JAD-NJK

Order Granting Motion for Attorney's  
Fees

[ECF No. 42]

10 Former Clark County School District ("CCSD") Administrator Bramby Tollen sued her  
11 former union, the Clark County Association of School Administration and Professional Employees,  
12 for breach of the duty of fair representation and related claims to redress her allegedly discriminatory  
13 reassignment, discharge, and ultimate loss of separation benefits.<sup>1</sup> On August 8, 2016, I granted  
14 summary judgment for the Union on Tollen's federal-law claims, and I declined to continue to  
15 exercise supplemental jurisdiction over Tollen's remaining state-law claims, so I dismissed them  
16 without prejudice.<sup>2</sup> The Union now moves for \$58,341 in attorney's fees.<sup>3</sup> I find that the Union is  
17 entitled to the fees that it requests, so I grant its motion and enter an amended judgment against  
18 Tollen for \$58,341.<sup>4</sup>

19 **Background**

20 After Tollen resigned from her job as an administrator with the Clark County School District,  
21 she sued her former union for discrimination based on sex and religion under Title VII, age  
22 discrimination under the ADEA, wrongful termination under the ADA, breach of contract, and  
23 breach of the duty of fair representation. The Union moved for summary judgment, arguing that all

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25 <sup>1</sup> ECF No. 1.

26 <sup>2</sup> ECF No. 40.

27 <sup>3</sup> ECF No. 42.

28 <sup>4</sup> I find this matter suitable for disposition without oral argument. L.R. 78-1.

1 of Tollen's claims either failed as a matter of law or lacked evidentiary support.<sup>5</sup> Tollen—with the  
 2 assistance of counsel—filed a five-page opposition and counter-motion for a summary-judgment  
 3 delay under Federal Rule of Civil Procedure 56(d).<sup>6</sup>

4 Based on the record before me, I had little trouble concluding that the Union was entitled to  
 5 summary judgment on Tollen's federal-law claims. I found that Tollen's Title VII, ADA, and ADEA  
 6 claims all failed as a matter of law because she did not allege any facts to support them in her  
 7 complaint, offer any admissible evidence from which a reasonable jury could find in her favor on  
 8 them, or offer any points and authorities to meaningfully oppose the Union's summary-judgment  
 9 challenge.<sup>7</sup> I then declined to continue to exercise supplemental jurisdiction over Tollen's remaining  
 10 state-law claims, so I dismissed them without prejudice and closed this case.

### 11 Discussion

#### 12 **A. Defendants are entitled to an award of attorney's fees because Tollen's action was** 13 **frivolous.**

14 The American Rule recognizes that each party in litigation must bear its own attorney's fees  
 15 in the absence of a rule, statute, or contract authorizing an award of fees.<sup>8</sup> Title VII, the ADEA, and  
 16 the ADA each contain fee-shifting provisions that allow district courts to award attorney's fees to the  
 17 prevailing party.<sup>9</sup> But attorney's fees in these types of cases should be awarded to a defendant only if  
 18 the "plaintiff's action was frivolous, unreasonable, or without foundation."<sup>10</sup> There is no subjective  
 19 bad-faith requirement. An action becomes frivolous when the result appears obvious or the  
 20 arguments are wholly without merit, and a defendant can recover if the plaintiff violates this standard

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22 <sup>5</sup> ECF No. 14 at 10.

23 <sup>6</sup> ECF No. 17.

24 <sup>7</sup> ECF No. 40 at 8–10.

25 <sup>8</sup> *MRO Commc'n Inc. v. Tel. & Co.*, 197 F.3d 1276, 1281 (9th Cir. 1999).

26 <sup>9</sup> 42 U.S.C. § 2000e-5(k); 42 U.S.C. § 12205; 29 U.S.C. § 626(b).

27 <sup>10</sup> *Christianburg Garment Co. v. EEOC*, 434 U.S. 412, 421 (1978).

1 at any point during the litigation, not just at the inception.<sup>11</sup>

2 Tollen's Title VII, ADEA, and ADA claims were frivolous, unreasonable, and without  
3 foundation. As I noted in my summary-judgment order, Tollen failed to plausibly allege these claims  
4 or offer any evidence to support them. And the undisputed evidence—which showed that Tollen  
5 was not terminated but voluntarily resigned—actually disproved Tollen's wrongful-termination  
6 theories.

7 The Union requests \$58,341 in attorney's fees—the total fees it incurred defending this  
8 lawsuit since it began in June 2015. Tollen argues that the Union's motion should be denied because  
9 it failed to provide the information to support its request as required by Local Rule 54-14.<sup>12</sup>  
10 Alternatively, she argues that the fees requested are excessive, redundant, or otherwise unnecessary.  
11 She contends that the Union's summary-judgment challenge was “overkill” because it had a much  
12 less costly alternative: a Rule 12(b)(6) motion upon service of the complaint.<sup>13</sup> Tollen also contends  
13 that the 18 hours billed for preparing for her four-hour deposition were excessive,<sup>14</sup> that all block-  
14 billing entries should be denied or reduced,<sup>15</sup> and that some of the entries are duplicative of the fees  
15 requested by the Union in Tollen's related Nevada employee-management relations board (EMRB)  
16 action.<sup>16</sup> She does not seriously contend that her action was reasonable, just that fees should be  
17 denied.

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19 <sup>11</sup> *Id.* at 422.

20 <sup>12</sup> ECF No. 46 at 1–6.

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22 <sup>13</sup> *Id.* at 8–9. Throughout her opposition, Tollen characterizes this case as “pro se litigation” to  
23 support her argument that no fees should be awarded. *Id.* at 7. This contention is unsupported by the  
24 record. Tollen retained counsel to pursue this action. Tollen's complaint was filed by counsel. ECF  
25 No. 1. That counsel represented Tollen through the early neutral case evaluation and discovery and  
26 withdrew only after filing an opposition to the Union's summary-judgment motion. ECF No. 29.  
27 Tollen then retained current counsel to oppose the Union's motion for attorney's fees.

28 <sup>14</sup> ECF No. 46 at 11.

<sup>15</sup> *Id.* at 12–13.

<sup>16</sup> *Id.* at 15–17.

1 **B. The Union's requested attorney's fees are reasonable.**

2 "The starting point for determining a reasonable fee is the 'lodestar' figure, which is the  
3 number of hours reasonably expended multiplied by a reasonable hourly rate."<sup>17</sup> At the outset, the  
4 Union's motion, supporting affidavit, and reply brief provide sufficient information from which I can  
5 glean the information required under Local Rule 54-14. This information, combined with my  
6 personal knowledge and experience in the prevailing market standards in this community and the  
7 statutes under which Tollen's claims were brought, allows me to determine whether the fees  
8 requested are reasonable under the circumstances in this case.

9 At the outset, I find that the Union's counsel's hourly rates are reasonable. Defense counsel's  
10 hourly rates of \$275–290 (associate) and \$350–360 (partner) for its ERISA and employee-benefits  
11 practice group are reasonable in light of the complexity of this case (which included five claims  
12 under three federal statutes and Nevada common law), the attorneys' experience and reputation, and  
13 the customary litigation fees for defending similar claims in this community.

14 I also find that the hours expended are reasonable. The Union submits an attorney  
15 declaration and 29 pages of billing records for the work performed in this case. The Union's fees are  
16 not excessive simply because the Union elected to answer Tollen's complaint, proceed with  
17 discovery, and file a summary-judgment motion rather than a motion to dismiss the complaint. And  
18 78.6 hours to prepare the Union's summary-judgment motion, reply, and opposition to Tollen's  
19 countermotion for a summary-judgment delay—briefs totaling 50 pages and including 43 exhibits  
20 spanning 365 pages—is not excessive. I also find that 18 hours to prepare for Tollen's  
21 deposition—on whose testimony most of her claims would hinge—and which included assembling  
22 and reviewing the supporting documents, is reasonable. Finally, the fees requested in this case are  
23 not duplicative of the fees requested in Tollen's ill-fated EMRB action.<sup>18</sup> Even if they were, she

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25 <sup>17</sup> *Gates v. Deukmejian*, 987 F.2d 1392, 1397 (9th Cir. 1992)

26 <sup>18</sup> In its reply, the Union clarifies that it sought \$49,942 in the EMRB action and that many tasks  
27 were attributable to both actions, making the redaction of invoices difficult. Tollen's alleged  
28 duplicative fees are only \$2,270, and the Union represents that the complained-of entries are not  
duplicative. ECF Nos. 48, 48-1 at 56.

1 admits in her motion that the EMRB declined to award the Union any of the fees requested in that  
2 case.<sup>19</sup> Though the record reflects that the Union has filed a motion for reconsideration of the  
3 board's denial of fees, it appears that, to date, no fees have been awarded in that case. So I decline to  
4 deny the Union's request for fees on that basis.

5 I am also unpersuaded by Tollen's argument that all of the Union's fees for block-billed  
6 entries should be reduced. Tollen is correct that the Ninth Circuit Court of Appeals has held that a  
7 district court may reduce hours that are billed in block format because the fee applicant bears the  
8 burden of documenting the hours worked and block billing makes it more difficult to determine how  
9 much time was spent on a particular activity.<sup>20</sup> The record reflects that the Union's counsel listed  
10 between three to five tasks on entries totaling 37.40 hours and \$9,947.50 in fees.<sup>21</sup> But the largest  
11 block-billed amount of time is only 3.30 hours, and eleven of the fourteen complained-of entries are  
12 less than one hour. Having carefully reviewed the Union's billing records, I am able to reasonably  
13 determine how much time was spent on particular activities. Because I find that it was reasonable  
14 under the circumstances, I decline to decrease the award requested for those items. I therefore grant  
15 the Union's motion for attorney's fees, and I award the full \$58,341 it requests.

### 16 Conclusion

17 Accordingly, IT IS HEREBY ORDERED that the Union's motion for attorney's fees [ECF  
18 No. 42] is GRANTED; the Union is awarded \$58,341 in fees.

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21 Dated this 2nd day of December, 2016.

22   
23 Jennifer A. Dorsey  
24 United States District Judge

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26 <sup>19</sup> ECF No. 46-1 at 9–13.

27 <sup>20</sup> *Welch v. Metropolitan Life Ins. Co.*, 480 F.3d 942, 948 (9th Cir. 2007).

28 <sup>21</sup> ECF No. 481 at 58–83; ECF No. 46 (summary of block-billed charges in opposition).